

LR 16-4 Alternate Dispute Resolution (ADR)

(See Fed. R. Civ. P. 16(c)(2)(I))

(a) Scope and Application

Unless otherwise directed by the Court or as provided in paragraph (b) below, this rule applies to all civil cases filed in the district court.

(b) Exemptions

The following classes of cases are presumed to be exempt from this rule:

- Habeas Corpus Petitions;
- Prisoner Suits;
- 28 U.S.C. §2255 Claims;
- Social Security Appeals;
- Civil Forfeitures;
- Qui Tam Actions;
- IRS Summons Enforcement Actions;
- Student Loan Collection; and
- ~~Veterans Overpayment;~~
- ~~Multi-district Litigation;~~
- ~~Bankruptcy Appeals; and~~
- ~~Cases Involving Pro Se Litigants.~~

(c) ADR Conference Requirements ~~(See LR 16-4(e)-(g))~~

Not later than one hundred-twenty (120) days from the initiation of a lawsuit, counsel for all parties (after conferring with their clients) must confer with all other attorneys of record and all unrepresented parties, to discuss whether the case would benefit from any private or court-sponsored ADR option.

(d) Joint ADR Report ~~(See Joint Alternate Dispute Resolution Report form)~~

Within one hundred-fifty (150) days of the initiation of a lawsuit, the parties must file a Joint Alternate Dispute Resolution Report form available on the Court's website at ord.uscourts.gov/civil-forms/local-forms/civil-forms.

(e) ADR Options – Generally

~~(1) Party Initiated~~

~~(1) (A)~~ Private ADR: The parties may agree ~~to pursue mediation, or any other~~ form of ~~alternate dispute resolution~~ ADR, including including arranging mediation with a private mediator. The parties are to select and compensate the mediator and, in conjunction with the

mediator, agree to the time, place, and duration of the mediation, at any time in the life of a civil case.

(2) ~~(B)~~ Request for Court Sponsored Volunteer Mediation: (See LR 16-4(f)(1)(A)). (C) Request for a Settlement Judge: (See LR 16-5). The assigned judge, on his/her own motion or at the request of a party, may schedule a settlement conference before a judicial officer of this Court.

(3) ~~(2)~~ Court-Sponsored Directed Mediation: (A) The assigned judge, Court on its his/her own motion, or upon the motion or request of a party, may refer any civil case to mediation with a mediator on the. As a general rule, the Court will refer cases with financial resources to private mediators or mediation services, and will refer cases with limited financial resources, or indigent parties, to the Court's panel list of volunteer mediators.

(4) Non- Binding Summary Trial and Other Forms of ADR:

(A) The assigned judge, on his/her own motion or at the request of a party, may assign any civil case for a non-binding summary trial (including a summary jury trial for cases triable to a jury), a mini-trial, an advisory jury proceeding, or an arbitration hearing.

(B) The assigned judge, on his/her own motion or at the request of a party, may assign any civil case for any other ADR process (such as an advisory jury panel consisting of panel members not drawn from the jury pool who volunteer their time to hear case summaries and confer with counsel about settlement).

(B) When the Court makes a referral to private mediation, the parties select and compensate the mediator and, in conjunction with the mediator, agree to the time, place, and duration of the mediation.

(C) During the conduct of Court-directed mediation, mediators act as officers of the Court and have judicial immunity.

(f) Court-Sponsored ~~Volunteer~~ Mediation Program Procedures

(1) Pro Bono Hours: Mediators on the Court-sponsored panel list agree to conduct mediation without cost to the parties for four (4) hours, exclusive of preparation time and travel time to or from the agreed location for the mediation. The mediator and the parties shall agree before the mediation on an hourly rate for the mediator in the event that the mediation continues beyond four (4) hours.

(2) ~~(1)~~ Selection of a ~~Volunteer~~ Mediator:

(A) Subject to the conditions of LR 16-4(e)(2)(A), any party may move to have a case referred to one of the Court's volunteer mediators.

(A) ~~(B)~~ If the motion is granted, The Court assigned judge will enter an order directing reference to volunteer mediation. Upon entry of the order, the parties will be asked to

select a mediator from the Court's list of ~~volunteer~~ mediators, and to work with the mediator to agree to the time, place, and duration of the mediation.

~~(C) As a general rule, volunteer mediators agree to conduct mediation without costs to the parties for four (4) hours. After that point, any decision to continue mediation, with or without compensation, must be agreed to by the mediator and the parties.~~

~~(B)(D)~~ If the parties cannot agree upon a mediator within fourteen (14) days after entry of the order, the plaintiff's attorney (or the pro se plaintiff) for the plaintiff must notify the Court, assigned judge, who will then designate a mediator.

(3) Judicial Immunity: During the conduct of Court-sponsored mediation, mediators act as officers of the Court, have judicial immunity, and are subject to the disqualification rule in LR 16-4(k).

(4)(2) Mediation Procedure Process: ~~(A)~~ After entry of the order of reference to mediation, the parties are required to provide such information and advice as the mediator requires.

~~(B)~~ Generally, ~~t~~he mediator ~~will~~ may schedule a preliminary conference prior to the mediation. ~~The mediator and~~ may also require the parties to participate in the preliminary conference along with their attorneys.

(5) Participation by Counsel and Parties:

~~(A)(C)~~ The ~~attorney~~ responsible attorney for each party's case ~~will~~ must attend the mediation and any ~~adjourned~~ additional sessions and. ~~At the mediation, the attorney for each party must be prepared to discuss in good faith:~~

- (i) All liability issues;
- (ii) All damage issues; and
- (iii) The position and interests of his or her client relative to settlement.

~~(B)(D)~~ Unless excused by the mediator, ~~clients a person~~ with complete settlement authority for each party must be available and must attend the mediation. However, the United States may be represented by the trial attorney.

~~(E) The mediator will determine whether parties will be present in the conference room, and if so, how they will be asked to participate.~~

~~(C)(F)~~ Where a party's Parties whose defense is provided by a liability insurance company insurer, a representative of the insurer, unless excused by the mediator, must need not personally attend the mediation conference and have full authority to bind the insurer to a settlement. This representative must also have ready telephonic access to another . However, if a representative of the insurer, unless excused by the mediator, with authority is available in the district, that representative must attend and must be

~~empowered to bind the insurer to enter into a settlement up to the policy limits if a settlement can be reached within the limits set by the insurer.~~

~~(G) In all cases, any person with authority must be present or available by telephone. However, the United States may be represented by the trial attorney.~~

~~(D)(H)~~ Unless excused from attendance by the mediator, an attorney or client's party's willful failure to attend the mediation when required must be reported to the Court by the mediator and may result in the imposition of sanctions.

(g) Proceedings Privileged

(1) ADR proceedings (including all statements made by a party, attorney, or other participant, and/or any memorandum or written submission provided to the mediator or ADR facilitator), are privileged— and, except as otherwise authorized by the Federal Rules of Evidence, will not be reported, recorded, or otherwise placed in evidence; made known to the trial court or jury; or construed for any purpose as an admission against interest.

(2) Unless waived in advance by the parties, or as otherwise authorized by the ~~Court assigned judge~~, this privilege applies to ADR proceedings conducted pursuant to LR 16-4(e)(1) ~~and (2)~~.

(3) No party will be bound by anything done or said ~~at the conference in mediation~~ unless a settlement is reached, in which event, the agreement upon a settlement will be reduced to writing ~~under the direction of the mediator~~ and will be binding upon all parties to that agreement. In a dispute between the parties regarding the terms of the settlement, the terms of the settlement as communicated by the mediator and accepted by the parties are not privileged under LR 16-4(g)(1).

(h) Proceedings Upon After Failure to Achieve an ADR Settlement

(1) Private ADR: Not later than seven (7) days following the conclusion of private ADR proceedings, the plaintiff's attorney (or the pro se plaintiff) will notify the Court in writing:

(A) Whether settlement (in whole or in part) was achieved; or

(B) Whether settlement could not be achieved and whether any (or all) of the parties believe that further judicial intervention (including the possibility of a settlement judge), will help to resolve the case.

(2) Court-~~Appointed Private or Volunteer~~Sponsored Mediation: ~~The Court-appointed mediator-~~ Not later than seven (7) days following the conclusion of Court-sponsored mediation, the mediator will ~~promptly~~ notify the Court-assigned judge if no settlement is achieved and. ~~The mediator will also inform the Court whether he or she believes~~ intervention by a settlement judge may help to resolve the matter.

(i) No Stay of Action ~~During ADR~~

Unless ~~directed~~ ordered by the ~~Court~~ assigned judge, no stay of an action will take place during ADR. In addition, no scheduled dates for any required submission or proceeding, including trial, will be changed unless otherwise ordered by the assigned judge.

(j) Qualifications and Requirements of Mediators

(1) As a general rule, the parties may select and thereby set the qualifications of a private mediator or mediation service. The mediator is; subject ~~only~~ to the requirements of LR 16-4(g).

(2) ~~Volunteer Court-sponsored~~ mediators must submit an agreement to serve ~~(See Agreement to Serve as Mediator form)~~, advise the Court assigned judge in which divisions of this Court they are willing to serve, and agree to perform at least eight (8) hours of volunteer mediation service per year without payment.

(3) ~~Volunteer Court-sponsored~~ mediators must be members in good standing of the Oregon State Bar who have been admitted to practice before the federal courts for a minimum of five years, or be a retired or senior judge.

(3)(4) Court-sponsored mediators must have a minimum of twelve (12) hours of actual mediation experience and submit proof or a certificate of attendance for a minimum of thirty (30) hours of mediation training that includes such competencies as information gathering, effective communication, ethical concerns, the role of a mediator as a neutral third party, control of the mediation process, and problem analysis.

(4)(5) The Clerk will maintain a list of ~~volunteer Court-sponsored~~ mediators by division of this Court.

(k) Disqualification of Mediators:

Any person selected as a mediator may be disqualified for bias or prejudice as provided in 18 U.S.C. See: §- 144 and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. §455.

(l) ~~(4)~~ ADR Program Administration

(1) An ADR Administrator is responsible for implementing, administering, overseeing, and evaluating the ADR program and procedures covered by LR 16-4.

(2) The Clerk will make pertinent rules, ~~and~~ explanatory materials, and requisite forms available to the parties.

[Delete LR 16-5 and renumber LR 16-6 as 16-5]